

REMARKS/ARGUMENTS

Favorable reconsideration of this application, in light of the following discussion, is respectfully requested.

Claims 1-3, 6-8, and 11-14 are pending; no claims are newly added, amended, or canceled herewith.

In the outstanding Office Action, Claims 1-3, 6-8, and 11-14 were rejected under 35 U.S.C. § 103(a) as unpatentable over McGuire et al. (U.S. Pat. No. 6,254,965, hereafter McGuire) in view of Akahori et al. (U.S. Pat. No. 5,310,587, hereafter Akahori), and Asahi (JP 404154579). For the reasons discussed below, this rejection is respectfully traversed.

Claim 1 relates to a kitchen sheet including a base sheet made of a fiber aggregate, the base sheet having a plurality of convex portions giving the kitchen sheet and apparent thickness of 1.0 mm or greater and a compressive recovery of 30% or more. The fiber aggregate of Claim 1 includes a hydrophobic spun-bonded/hydrophobic melt-blown/hydrophobic spun-bonded nonwoven fabric. As described in the specification, if the apparent thickness of the kitchen sheet is smaller than 1.0 mm, the passageways for water vapor formed of concavities connecting with each other are narrow, and the drops of condensation on a kitchen sheet come into direct contact with food.¹

Although the outstanding Office Action cited McGuire, Akahori, and Asahi in the rejection of Claims 1-3, 6-8, and 11-14, the outstanding rejection primarily relies upon Official Notice that it is common and well-known in the art to utilize SMS laminates.

However, as set forth in MPEP § 2144.03, "Official notice without documentary

¹ Specification, page 13, lines 10-15.

evidence to support an examiner's conclusion is permissible only in some circumstances."

Moreover,

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well-known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some referenced work recognized as standard in the pertinent art.

In re Ahlert, 424 F.2d at 1091, 165 U.S.P.Q. at 420-421 (emphasis in original).

Moreover, the CAFC has previously rejected "the notion that judicial or administrative notice may be taken of the state of the art. The facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amenable to the taking of such notice." In re Eynde, 480 F.2d 1364, 1370, 178 U.S.P.Q. 470, 474 (CCPA 1973). Finally, "it is never appropriate to rely solely on 'common knowledge' in the art without evidentiary support in the record, as the principle evidence upon which a rejection was based". Zurko, 258 F.3d at 1385, 59 U.S.Q.P.2d at 1697.

The outstanding rejection relies upon Official Notice both to establish the state of the art and as the primary basis of the outstanding rejection. Thus, as the outstanding rejection violates the requirements of MPEP § 2144.03, it is respectfully submitted that the Office Action has failed to provide a *prima facie* case of obviousness. Accordingly, it is respectfully requested that the rejection of Claims 1-3, 6-8, and 11-14 be withdrawn.

Consequently, in view of the foregoing discussion, it is respectfully submitted that

this application is in condition for allowance. An early an favorable action is therefore respectfully requested.

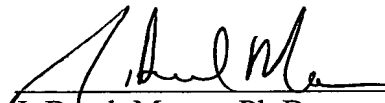
Respectfully submitted,

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